

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS - DALLAS DIVISION**

**HOPPENSTEIN PROPERTIES, INC.**

*Plaintiff,*

**v.**

**CITY OF DALLAS and EDDIE GARCIA, in  
his official capacity as Chief of Police,**

*Defendants.*

§

§

§

§

§

§

§

§

§

**Civ. Action No.3:21-cv-01172**

**PLAINTIFF'S APPENDIX TO ITS OPPOSITION TO DEFENDANTS' MOTION TO  
DISMISS**

Warren V. Norred  
Texas Bar No. 24045094;  
wnorred@norredlaw.com  
515 E. Border Street;  
Arlington, Texas 76010  
Tel. (817) 704-3984; Fax. (817) 524-6686  
*Attorney for Plaintiff*

**APPENDIX TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO  
DISMISS**

Exh. 1; EFH Original Petition for Review	1
Exh. 2; RBL Findings of Fact Original	10
Exh. 3; RBL Findings of Fact Amended	14
Exh. 4; RBL PLAB Attendance	18
Exh. 5; EFH Findings of Fact	19
Exh. 6; EFH PLAB Attendance	23
Exh. 7; PLAB Vacancies August 2021	24
Exh. 8; PLAB Board Members September 2021	25
Exh. 9; PLAB Minutes February 2021	27

Respectfully submitted,

/s/ Warren V. Norred

Warren V. Norred

Texas Bar No. 24045094;

wnorred@norredlaw.com

515 E. Border Street; Arlington, Texas 76010

Tel. (817) 704-3984; Fax. (817) 524-6686

*Attorney for Plaintiff*

CERTIFICATE OF SERVICE - I certify that the above was served on all parties seeking service in the instant case via the Court's e-file system on September 17, 2021.

/s/Warren V. Norred

DC-21-11551

CAUSE NO. DC-\_\_\_\_\_

<b>HOPPENSTEIN PROPERTIES, INC.,</b>	§	<b>IN THE DISTRICT COURT</b>
<i>Plaintiff,</i>	§	
	§	
<b>v.</b>	§	
	§	<b>298th</b>
<b>CITY OF DALLAS PERMIT AND</b>	§	<b>— JUDICIAL COURT</b>
<b>LICENSE APPEAL BOARD,</b>	§	
<i>Defendant.</i>	§	<b>DALLAS COUNTY, TEXAS</b>

**PLAINTIFF’S ORIGINAL PETITION FOR JUDICIAL REVIEW**

COMES NOW Hoppenstein Properties, Inc., Plaintiff, complains of the City of Dallas Permit and License Appeal Board (“PLAB”) and by this petition seeks review of a decision of the PLAB.

SUMMARIZING: While Plaintiff has exhausted all of its administrative remedies, it remains aggrieved by the PLAB’s final decision, which substantially prejudiced Plaintiff’s rights. Plaintiff therefore seeks the judicial review entitled to it by the City of Dallas Code, Texas Government Code, and the Texas Constitution.

## **I. PARTIES**

1. The Plaintiff Hoppenstein Properties, Inc. is a Texas corporation, PO Box 207, Waco, Texas 76703, Texas and service of process may be had by serving its counsel of record the undersigned.
2. The PLAB is a municipal board and service of process may be had by serving the City Attorney at 1500 Marilla St #7dn, Dallas, Texas 75201.

## **II. VENUE AND JURISDICTION**

3. The events complained of occurred within Dallas County. Additionally, Tex. Gov't Code Ann. § 2001.171 provides a limited waiver of sovereign immunity. *See Tex. Dep't of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, (Tex. 2004).

## **III. DISCOVERY**

4. Plaintiff pleads that discovery should be conducted in accordance with a tailored discovery control plan under Civil Procedure Rule 190.4.

## **IV. FACTUAL BACKGROUND**

5. On April 29, 2021, Plaintiff received a letter from the Chief of Police dated April 27, 2021 and signed April 21, 2021. This letter served as a notice to inform Plaintiff that its real property, located at 1207 E. Redbird Ln., Dallas, Texas 75241, had been presumed to be a “habitual criminal property.”
6. On or about May 26, 2021, Plaintiff attended the mandatory Accord Meeting.

7. Thereafter, Plaintiff received a second letter, dated and signed July 7, 2021, or approximately 40 days after the Accord Meeting. This letter served as a “Notice of Final Designation as a Habitual Criminal Property for 1207 E. Redbird Ln., Dallas, Texas 75241.”

8. Plaintiff timely filed its notice of appeal on July 16, 2021, in person, at the City of Dallas City Secretary’s Office.

9. On August 5, 2021, a hearing was held before the PLAB, which moved and then voted to affirm the Chief’s Final Determination. In connection with the hearing, a record was made consisting of all pleadings and evidence introduced before the PLAB. Case number 21-5952.

10. Demand is hereby made that the PLAB transmit the original or a certified copy of the entire record of such proceedings to the Court within the time permitted by law for the filing of an answer in this cause.

#### **IV. LEGAL STANDARDS**

11. When an administrative order is appealed to a trial court, the trial court must examine the administrative law judge’s order to determine whether it is reasonably supported by substantial evidence, considering the record as a whole. The party seeking judicial review shall offer, and the reviewing court shall admit, the state agency record into evidence as an exhibit. Tex. Gov’t Code § 2001.175(d).

12. Whether substantial evidence supports an administrative decision is a question of law. *Texas Dep't of Pub. Safety v. Alford*, 209 S.W.3d 101, 103 (Tex. 2006).

13. Judicial review of administrative action by other than trial de novo is a true appeal because the court's review of the evidence is limited to the agency's record. Tex. Gov't Code § 2001.175. No other judgment may be substituted for that of the agency as to the weight of the evidence on questions committed to agency discretion. *See* Tex. Gov't Code § 2001.172.

14. The right to find facts rests with the administrative agency. *Pub. Util. Comm'n v. AT&T Commc'ns*, 777 S.W.2d 363, 365 (Tex. 1989).

15. In general, a court reviewing administrative action under the substantial evidence rule is concerned only with the reasonableness of the administrative order, not with its correctness. *El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). A party may apply to the court to present additional evidence. If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the state agency, the court may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may change its findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court. Tex. Gov't Code § 2001.175.

16. A court shall conduct the review sitting without a jury and is confined to the agency record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency that are not reflected in the record. In reviewing an agency decision under the substantial evidence test, the court may consider only the evidence introduced before the agency, except that it may receive evidence of procedural irregularities alleged to have occurred before the agency but not reflected in the record. Tex. Gov't Code § 2001.175; *see Tex. Water Comm'n v. Dellana*, 849 S.W.2d 808, 810 (Tex. 1993) (where court held that once petitioner has exhausted administrative remedies and petitioned for judicial review, reviewing court may go beyond agency record to receive evidence of procedural irregularities alleged to have occurred before agency but not reflected in record); *In re Edwards Aquifer Authority*, 217 S.W.3d 581, 589 (Tex. App.—San Antonio 2006, no pet.).

17. All of the evidence introduced before the agency that supported the agency's decision is material in a proceeding to review the agency decision under the substantial evidence rule. The reviewing court may not determine whether substantial evidence supported the agency decision unless all of that evidence is before it. Thus, the person contesting the agency decision must ensure that the full record is before the reviewing court. *See Flowers v. Alcoholic Beverage Comm'n*, 782 S.W.2d 343, 343–344 (Tex. App.—Beaumont 1989, writ denied).

18. The agency will transmit the original or a certified copy of the entire record of the proceeding under review to the reviewing court. The copy of the agency record must be filed with the clerk of the court. Tex. Gov't Code § 2001.175(b), and the party seeking judicial review must offer, and the reviewing court must admit, the agency record into evidence as an exhibit. Tex. Gov't Code § 2001.175(d).

19. A reviewing court must answer two inquiries in determining whether an administrative decision meets the substantial evidence test. First, the court must determine whether the findings of underlying fact stated in the agency order fairly support the agency's findings of ultimate fact or conclusions of law also stated in the order as the basis for the agency's decision. If so, the court must determine whether the findings of underlying fact have reasonable support in the evidence adduced in the agency proceeding. *Tex. Health Facilities v. Charter Medical-Dallas*, 665 S.W.2d 446, 452–453 (Tex. 1984).

20. An agency decision is also subject to reversal or remand if substantial rights of the appellant have been prejudiced because the agency decision is (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made on unlawful procedure; or (4) affected by other error of law; *see, e.g., Hernandez v. Meno*, 828 S.W.2d 491, 493–495 (Tex. App.—Austin 1992, writ denied).



21. Even under the substantial evidence test, the agency's legal determinations are reviewed under a de novo standard. *Tex. Dep't of Public Safety v. Hutcheson*, 235 S.W.3d 312, 314 (Tex. App.—Corpus Christi 2007, pet. denied).

22. The agency's interpretation of a statute that the agency is charged with enforcing is entitled to serious consideration, as long as it is reasonable and does not contradict the statute's plain language. *Harris Cnty. Appraisal Dist. v. Tex. Workforce Comm'n*, 519 S.W.3d 113, 118 (Tex. 2017).

23. A ground for reversing or remanding an agency decision is that it is arbitrary or capricious. Tex. Gov't Code § 2001.174(2)(F); *see, e.g., AEP Texas North Co. v. Public Utility Comm'n*, 297 S.W.3d 435, 450 (Tex. App.—Austin 2009, pet. denied) (where court held that it was arbitrary and capricious for agency to adopt new policy subsequent to hearing).

24. Arbitrariness is determined by examining the agency's decision to see if it was based on a consideration of all relevant factors. An administrative decision may be supported by substantial evidence and yet be invalid because it is arbitrary. *Slavin v. City of San Antonio*, 330 S.W.3d 670, 672–673 (Tex. App.—San Antonio 2010, no pet.). An agency decision may be arbitrary and capricious if it is based on legally irrelevant factors or if legally relevant factors were not considered. *El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 184 (Tex. 1994).

25. In deciding the appeal, the PLAB is limited to the issues of whether the presumptions in Section 27-48 of this chapter, as amended, are satisfied. City of Dallas Code § 2-51.

26. The scope of authority granted to the PLAB is determined by § 2-51, which incorporates § 27-48 (not, importantly, 27-48(a) or 27-48(b) only).

27. The City of Dallas Code § 27-48 in turn incorporates § 27-49(b)(1), which reads in pertinent part that the owner may present evidence that the owner has taken reasonable steps to abate the abatable criminal activity, including, without limitation [§ 27-49(b)(1)(i-vi)].

28. The City Attorney represented, to Plaintiff's objection, that the scope of PLAB's authority did not reach § 27-49(b)(1), which plainly states that Plaintiff may present evidence that it has taken reasonable steps *without limitation*.

29. Plaintiff did take reasonable steps. Plaintiff was under no obligation to take every step listed, in addition to those potentially suggested by a city employee. In the face of the Chief of Police's "rebuttable presumption" Plaintiff met its burden; it took reasonable steps to abate abatable criminal activity and evidence of the same was presented both at the Accord Meeting and at the PLAB hearing.

## **V. CONDITIONS PRECEDENT**

30. All conditions precedent having occurred, Plaintiff is entitled to judicial review of the PLAB's decision.

## **V. DAMAGES**

31. As a result of the unlawful and improper action of agency as described above, the Plaintiff has suffered harm and prejudice to its rights.

## **VI. PRAYER**

32. WHEREFORE, the Plaintiff requests that the PLAB be cited to appear and answer, and that on final trial, the Plaintiff have judgment of the Court:

- i. PLAB and interested parties be cited to appear and answer.
- ii. On final hearing, PLAB decision be reversed or remanded for further proceedings consistent with court's judgment.
- iii. Court tax costs against PLAB and grant Plaintiff general relief.

Respectfully submitted,

/s/ Warren V. Norred

Warren V. Norred,

Texas Bar No. 24045094,

wnorred@norredlaw.com

515 E. Border St., Arlington, Texas 76010

Tel. (817) 704-3984, Fax. (817) 524-6686

Attorney for Plaintiff

THE STATE OF TEXAS

§  
§  
§  
§  
§  
§

FINDINGS OF FACT AND ORDER  
OF THE PERMIT AND LICENSE  
APPEALS BOARD OF THE  
CITY OF DALLAS, TEXAS

COUNTY OF DALLAS

# **I. JURISDICTION OF PERMIT AND LICENSE APPEALS BOARD**

## **A. APPEAL OF DENIAL. Section 27-48 of the Dallas City Code provides:**

(a) A property is presumed a habitual criminal property if the property is the site:

(1) of five or more abatable criminal activities within 365 days resulting in either a report of a law enforcement agency documenting an investigation of an abatable criminal activity on the property or enforcement action against any person associated with the abatable criminal activity on the property; and

(2) at which persons have historically committed abatable criminal activities, according to recent crime data.

(b) An owner of a habitual criminal property is presumed to have knowingly tolerated the abatable criminal activity at the owner's property by failing to take reasonable steps, including those outlined in Section 27-49(b)(1) of this chapter, as amended, to abate the abatable criminal activity.

On July 7, 2021, the real property of Maria Retail Inc., c/o Abdel Hussein ("Applicant"), located at 1207 E. Red Bird Lane, Dallas, Texas, was designated as a habitual criminal property under Chapter 27, Article VIII, of the Dallas City Code. Applicant appealed the chief of police's decision to the Permit and License Appeals Board pursuant to Sections 27-51 and 2-96(a) of the Dallas City Code which state:

### **Section 27-51**

"The chief's determinations under Sections 27-49 and 27-50 of this chapter, as amended, are final unless the owner files a written appeal to the permit and license appeal board. The appeal must be filed with the city secretary not later than 10 calendar days after the date the owner receives the notice of the chief's final determination. A person who does not attend the accord meeting is not entitled to an appeal under this section for one year after the accord meeting date in the notice. Only the owner is entitled to an appeal under this article."

### **Section 2-96**

"(a) If the director of a city department denies, suspends, or revokes a license or permit over which the director has regulatory authority, and no appeal is provided by ordinance to another city board, the action is final unless the applicant, licensee, or permittee files a written appeal to the permit and license appeal board with the city secretary within 10 calendar days after the date of receiving notice of the director's action."

## **B. COMPOSITION OF PANEL. Section 2-95 of the Dallas City Code provides, in pertinent part:**

“(a) There is hereby created the permit and license appeal board of the city, which shall be composed of 15 members. Each city council member shall appoint one member to the board. The mayor shall appoint the board chair, and the full city council shall appoint the vice-chair.

(b) The permit and license appeal board shall hear appeals of department directors’ actions on licenses and permits issued by the city filed in accordance with Section 2-96 of this chapter and requests for exemptions from locational restrictions filed in accordance with Section 14-2.3, 14-2.4, or 41A-14 of this code, whichever applies.”

\* \* \*

## II. FINDINGS OF FACT

On August 5, 2021, the Board considered the evidence and arguments presented by the Applicant and the Dallas Police Department. Board member Steinhart made the motion to X affirm the decision of the Chief of Police / find for the Applicant and reverse the decision of the Chief of Police, in accordance with Chapter 27 and Section 2-96 of the Dallas City Code, seconded by Boardmember Kight. The Board approved the motion by a vote of 8-0 (unanimous vote) ✓

### The Board finds the following:

- (1) The property X is / is not the site of five or more abatable criminal activities within 365 days resulting in either a report of a law enforcement agency documenting an investigation of an abatable criminal activity on the property or enforcement action against any person associated with the abatable criminal activity on the property;
- (2) The property X is / is not the site at which persons have historically committed abatable criminal activities, according to recent crime data; and
- (3) X The owner of the habitual criminal property **knowingly** tolerated the abatable criminal activity at the owner’s property **by failing to take reasonable steps**, including those outlined in Section 27-49(b)(1) of the Code, as amended, to abate the abatable criminal activity.  
       The owner of the habitual criminal property **did not knowingly** tolerate the abatable criminal activity at the owner’s property and **has taken reasonable steps**, including those outlined in Section 27-49(b)(1) of the Code, as amended, to abate the abatable criminal activity.

\* \* \*

### III. ORDER OF THE PERMIT AND LICENSE APPEALS BOARD

It is hereby adjudged and ordered by the Permit and License Appeals Board that the Applicant has / X **has not** satisfied its burden of proof as required by the Dallas City Code, and therefore, X affirms the decision of the Chief of Police /     finds for the Applicant and reverses the decision of the Chief of Police, in accordance with Chapter 27 and Section 2-96 of the Dallas City Code.

APPROVED AS TO FORM:

GENERAL COUNSEL, PERMIT AND LICENSE APPEALS BOARD

BY *Ama Jambesti Holmes*  
General Counsel

#### THE PERMIT AND LICENSE APPEALS BOARD

BY *Benjamin Setnick* Voting on the motion ☒ Aye ☐ Nay  
Benjamin Setnick (Aug 5, 2021 15:49 CDT)

BY *Brandi Patterson* Voting on the motion ☒ Aye ☐ Nay

BY *Derrick Nutall* Voting on the motion ☐ Aye ☐ Nay  
Derrick Nutall (Aug 5, 2021 16:31 CDT)

BY *Richard A. Cuccia, II* Voting on the motion ☒ Aye ☐ Nay  
Richard A. Cuccia, II (Aug 5, 2021 17:11 CDT)

BY *Derrick Phillips* Voting on the motion ☐ Aye ☐ Nay  
Derrick Phillips (Aug 6, 2021 14:38 CDT)

BY *Kenny Steinhart* Voting on the motion ☐ Aye ☐ Nay  
Kenny Steinhart (Aug 5, 2021 22:35 MDT)



BY robert richard Voting on the motion ☐ Aye ☐ Nay  
robert richard (Aug 7, 2021 13:57 CDT)

BY Charles W Kight Voting on the motion ☒ Aye ☐ Nay  
Charles W Kight (Aug 5, 2021 17:15 CDT)

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

THE STATE OF TEXAS

COUNTY OF DALLAS

§  
§  
§  
§  
§  
§FINDINGS OF FACT AND ORDER  
OF THE PERMIT AND LICENSE  
APPEALS BOARD OF THE  
CITY OF DALLAS, TEXASI. JURISDICTION OF PERMIT AND LICENSE APPEALS BOARDA. APPEAL OF DENIAL. Section 27-48 of the Dallas City Code provides:

(a) A property is presumed a habitual criminal property if the property is the site:

(1) of five or more abatable criminal activities within 365 days resulting in either a report of a law enforcement agency documenting an investigation of an abatable criminal activity on the property or enforcement action against any person associated with the abatable criminal activity on the property; and

(2) at which persons have historically committed abatable criminal activities, according to recent crime data.

(b) An owner of a habitual criminal property is presumed to have knowingly tolerated the abatable criminal activity at the owner's property by failing to take reasonable steps, including those outlined in Section 27-49(b)(1) of this chapter, as amended, to abate the abatable criminal activity.

On July 7, 2021, the real property of Hoppenstein Properties, Inc., c/o Norman Hoppenstein 'Applicant' located at 1207 E. Red Bird Lane, Dallas, Texas, was designated as a habitual criminal property under Chapter 27, Article VIII, of the Dallas City Code. Applicant appealed the chief of police's decision to the Permit and License Appeals Board pursuant to Sections 27-51 and 2-96(a) of the Dallas City Code which state:

**Section 27-51**

"The chief's determinations under Sections 27-49 and 27-50 of this chapter, as amended, are final unless the owner files a written appeal to the permit and license appeal board. The appeal must be filed with the city secretary not later than 10 calendar days after the date the owner receives the notice of the chief's final determination. A person who does not attend the accord meeting is not entitled to an appeal under this section for one year after the accord meeting date in the notice. Only the owner is entitled to an appeal under this article."

**Section 2-96**

"(a) If the director of a city department denies, suspends, or revokes a license or permit over which the director has regulatory authority, and no appeal is provided by ordinance to another city board, the action is final unless the applicant, licensee, or permittee files a written appeal to the permit and license appeal board with the city secretary within 10 calendar days after the date of receiving notice of the director's action."

B. COMPOSITION OF PANEL. Section 2-95 of the Dallas City Code provides, in pertinent part:



“(a) There is hereby created the permit and license appeal board of the city, which shall be composed of 15 members. Each city council member shall appoint one member to the board. The mayor shall appoint the board chair, and the full city council shall appoint the vice-chair.

(b) The permit and license appeal board shall hear appeals of department directors’ actions on licenses and permits issued by the city filed in accordance with Section 2-96 of this chapter and requests for exemptions from locational restrictions filed in accordance with Section 14-2.3, 14-2.4, or 41A-14 of this code, whichever applies.”

\* \* \*

## II. FINDINGS OF FACT

On August 5, 2021, the Board considered the evidence and arguments presented by the Applicant and the Dallas Police Department. Board member Steinhart made the motion to X affirm the decision of the Chief of Police / find for the Applicant and reverse the decision of the Chief of Police, in accordance with Chapter 27 and Section 2-96 of the Dallas City Code, seconded by Boardmember Kight. The Board approved the motion by a vote of 8-0 (unanimous vote).

### **The Board finds the following:**

- (1) The property X is / is not the site of five or more abatable criminal activities within 365 days resulting in either a report of a law enforcement agency documenting an investigation of an abatable criminal activity on the property or enforcement action against any person associated with the abatable criminal activity on the property;
- (2) The property X is / is not the site at which persons have historically committed abatable criminal activities, according to recent crime data; and
- (3) X The owner of the habitual criminal property **knowingly** tolerated the abatable criminal activity at the owner’s property **by failing to take reasonable steps**, including those outlined in Section 27-49(b)(1) of the Code, as amended, to abate the abatable criminal activity.  
       The owner of the habitual criminal property **did not knowingly** tolerate the abatable criminal activity at the owner’s property and **has taken reasonable steps**, including those outlined in Section 27-49(b)(1) of the Code, as amended, to abate the abatable criminal activity.

\* \* \*

### III. ORDER OF THE PERMIT AND LICENSE APPEALS BOARD

It is hereby adjudged and ordered by the Permit and License Appeals Board that the Applicant has / X **has not** satisfied its burden of proof as required by the Dallas City Code, and therefore, X affirms the decision of the Chief of Police /     finds for the Applicant and reverses the decision of the Chief of Police, in accordance with Chapter 27 and Section 2-96 of the Dallas City Code.

APPROVED AS TO FORM:

GENERAL COUNSEL, PERMIT AND LICENSE APPEALS BOARD

By

Ama Jambetti Holmes

General Counsel

### THE PERMIT AND LICENSE APPEALS BOARD

BY <u>Benjamin Setnick</u> <small>Benjamin Setnick (Aug 5, 2021 15:49 CDT)</small>	Voting on the motion	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
BY <u>Brandi Patterson</u>	Voting on the motion	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
BY <u><del>Richard Nutall</del></u> <small>Derrick Nutall (Aug 5, 2021 16:31 CDT)</small>	Voting on the motion	<input type="checkbox"/> Aye	<input type="checkbox"/> Nay
BY <u>Richard A. Cuccia, II</u> <small>Richard A. Cuccia, II (Aug 5, 2021 17:11 CDT)</small>	Voting on the motion	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
BY <u><del>Derrick Phillips</del></u> <small>Derrick Phillips (Aug 6, 2021 14:38 CDT)</small>	Voting on the motion	<input type="checkbox"/> Aye	<input type="checkbox"/> Nay
BY <u>Kenny Steinhart</u> <small>Kenny Steinhart (Aug 5, 2021 22:35 MDT)</small>	Voting on the motion	<input type="checkbox"/> Aye	<input type="checkbox"/> Nay

BY *robert richard* Voting on the motion ☐ Aye ☐ Nay  
robert richard (Aug 7, 2021 13:57 CDT)

BY *Charles W Kight* Voting on the motion ☒ Aye ☐ Nay  
Charles W Kight (Aug 5, 2021 17:15 CDT)

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

BY \_\_\_\_\_ Voting on the motion Aye Nay

# **PERMIT AND LICENSE APPEAL BOARD 2021 ATTENDANCE REPORT**

**HEARING:** HOPPENSTEIN PROPERTIES INC. **DATE:** 08/05/21

**TIME:** 10:01 AM 1:45 PM **HEARING FILE:** 21-5952  
Start End

<u>POSITION</u>	<u>BOARD MEMBER</u>	<u>ATTENDANCE</u>
Chair / Place 15	Benjamin Setnick	P
Place 01	Nancy Galvan	A
Place 02	VACANT	V
Place 03	VACANT	V
Place 04	VACANT	V
Place 05	VACANT	V
Place 06	Brandi Patterson	P
Place 07	Derrick Nutall	P
Place 08	VACANT	V
Place 09	Richard Cuccia	P
Place 10	Derrich Phillips	P
Place 11	Kenneth Steinhart	P
Place 12	Robert Richard	P
Place 13	Charles Kight	P
Place 14	VACANT	V

Legend: A–Absent; AW–Appeal Withdrawn at hearing; AWVT–Absent When Vote Taken; CON–Conflict; P–Present; V–Vacant; OH–Observe Hearing

THE STATE OF TEXAS

§  
§ FINDINGS OF FACT AND ORDER  
§ OF THE PERMIT AND LICENSE  
§ APPEALS BOARD OF THE  
§ CITY OF DALLAS, TEXAS  
§

COUNTY OF DALLAS

**I. JURISDICTION OF PERMIT AND LICENSE APPEALS BOARD**

**A. APPEAL OF DENIAL.** Section 27-48 of the Dallas City Code provides:

(a) A property is presumed a habitual criminal property if the property is the site:

(1) of five or more abatable criminal activities within 365 days resulting in either a report of a law enforcement agency documenting an investigation of an abatable criminal activity on the property or enforcement action against any person associated with the abatable criminal activity on the property; and

(2) at which persons have historically committed abatable criminal activities, according to recent crime data.

(b) An owner of a habitual criminal property is presumed to have knowingly tolerated the abatable criminal activity at the owner's property by failing to take reasonable steps, including those outlined in Section 27-49(b)(1) of this chapter, as amended, to abate the abatable criminal activity.

On August 11, 2021, the real property of Hoppenstein Properties, Inc. ("Applicant"), located at 3308 Elsie Faye Heggins Street, Dallas, Texas, was designated as a habitual criminal property under Chapter 27, Article VIII, of the Dallas City Code. Applicant appealed the chief of police's decision to the Permit and License Appeals Board pursuant to Sections 27-51 and 2-96(a) of the Dallas City Code which state:

**Section 27-51**

"The chief's determinations under Sections 27-49 and 27-50 of this chapter, as amended, are final unless the owner files a written appeal to the permit and license appeal board. The appeal must be filed with the city secretary not later than 10 calendar days after the date the owner receives the notice of the chief's final determination. A person who does not attend the accord meeting is not entitled to an appeal under this section for one year after the accord meeting date in the notice. Only the owner is entitled to an appeal under this article."

**Section 2-96**

"(a) If the director of a city department denies, suspends, or revokes a license or permit over which the director has regulatory authority, and no appeal is provided by ordinance to another city board, the action is final unless the applicant, licensee, or permittee files a written appeal to the permit and license appeal board with the city secretary within 10 calendar days after the date of receiving notice of the director's action."

**B. COMPOSITION OF PANEL.** Section 2-95 of the Dallas City Code provides, in pertinent part:

“(a) There is hereby created the permit and license appeal board of the city, which shall be composed of 15 members. Each city council member shall appoint one member to the board. The mayor shall appoint the board chair, and the full city council shall appoint the vice-chair.

(b) The permit and license appeal board shall hear appeals of department directors’ actions on licenses and permits issued by the city filed in accordance with Section 2-96 of this chapter and requests for exemptions from locational restrictions filed in accordance with Section 14-2.3, 14-2.4, or 41A-14 of this code, whichever applies.”

\* \* \*

## II. FINDINGS OF FACT

On September 2, 2021, the Board considered the evidence and arguments presented by the Applicant and the Dallas Police Department. Board member Derrick Nutall made the motion to X affirm the decision of the Chief of Police / find for the Applicant and reverse the decision of the Chief of Police, in accordance with Chapter 27 and Section 2-96 of the Dallas City Code, seconded by Robert Richards. The Board approved the motion by a vote of 6-0.

### The Board finds the following:

- (1) The property X is / is not the site of five or more abatable criminal activities within 365 days resulting in either a report of a law enforcement agency documenting an investigation of an abatable criminal activity on the property or enforcement action against any person associated with the abatable criminal activity on the property;
- (2) The property X is / is not the site at which persons have historically committed abatable criminal activities, according to recent crime data; and
- (3) X The owner of the habitual criminal property **knowingly** tolerated the abatable criminal activity at the owner’s property **by failing to take reasonable steps**, including those outlined in Section 27-49(b)(1) of the Code, as amended, to abate the abatable criminal activity.  
       The owner of the habitual criminal property **did not knowingly** tolerate the abatable criminal activity at the owner’s property and **has taken reasonable steps**, including those outlined in Section 27-49(b)(1) of the Code, as amended, to abate the abatable criminal activity.

\* \* \*



III. ORDER OF THE PERMIT AND LICENSE APPEALS BOARD

It is hereby adjudged and ordered by the Permit and License Appeals Board that the Applicant has / Xhas not satisfied its burden of proof as required by the Dallas City Code, and therefore, Xaffirms the decision of the Chief of Police /   finds for the Applicant and reverses the decision of the Chief of Police, in accordance with Chapter 27 and Section 2-96 of the Dallas City Code.

APPROVED AS TO FORM:  
GENERAL COUNSEL, PERMIT AND LICENSE APPEALS BOARD

BY Anna Lambert Holmes  
General Counsel

## THE PERMIT AND LICENSE APPEALS BOARD

BY [Signature] Chair Voting on the motion ☒ Aye ☐ Nay

BY [Signature] Voting on the motion ☒ Aye ☐ Nay

BY Derrick J Nutall  
Derrick J Nutall (Sep 2, 2021 14:34 CDT) Voting on the motion ☒ Aye ☐ Nay

BY Richard A. Cuccia, II  
Richard A. Cuccia, II (Sep 3, 2021 09:14 CDT) Voting on the motion ☒ Aye ☐ Nay

BY [Signature]  
Kenneth Steinhart (Sep 3, 2021 09:25 CDT) Voting on the motion ☒ Aye ☐ Nay

BY Charles W Kight  
Charles W Kight (Sep 2, 2021 14:19 CDT) Voting on the motion ☒ Aye ☐ Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay

BY \_\_\_\_\_ Voting on the motion      Aye      Nay



Legend: A–Absent; AW–Appeal Withdrawn at hearing; AWVT–Absent When Vote Taken; CON–Conflict; P–Present; V–Vacant; OH–Observe Hearing

MLK District 08 VACANT

MLK District 13 VACANT

MLK District 14 VACANT

---

## **NFC - NORTH TEXAS EDUCATION FINANCE CORPORATION**

Membership: 11 members nominated by the City Manager and appointed by the full City Council

NFC Position 06 VACANT

NFC Position 07 VACANT

NFC Position 08 VACANT

NFC Position 09 VACANT

NFC Position 10 VACANT

NFC Position 11 VACANT

---

## **NOC - NORTH OAK CLIFF MUNICIPAL MANAGEMENT DISTRICT**

Membership: 6 members appointed by the full City Council and 1 Assistant City Manager, 1 Chief Financial Officer, 1 Economic Development Director

NOC Position 01 VACANT

NOC Position 02 VACANT

NOC Position 04 VACANT

NOC Position 06 VACANT

NOC Position 09 VACANT

---

## **PLA - PERMIT AND LICENSE APPEAL BOARD**

Membership: 15 members, one appointed by each City Council member.

ALL TERMS END: 09/30/2021

PLA District 02 VACANT

PLA District 03 VACANT

PLA District 04 VACANT

PLA District 05 VACANT

PLA District 08 VACANT

PLA District 14 VACANT

---

## **RDC - REDISTRICTING COMMISSION**

Membership: 15 members: one appointed by each City Council member

RDC District 03 VACANT

RDC District 06 VACANT

**PLA - PERMIT AND LICENSE APPEAL BOARD**

Membership: 15 members, one appointed by each City Council member.

Quasi-Judicial

ALL TERMS END: 09/30/2021

Staff Support: DAWNA BROWN, BOARD COORDINATOR

CITY SECRETARY'S OFFICE

Phone: 214-670-3741

CITY HALL - 5DS

Fax: 214-670-5029

DALLAS, TEXAS 75201

**District 01 NANCY GALVAN**

H F 01 I Holdover

Nominated by: WEST

Terms served: 1

Member since: 6/19/2020

**District 02 VACANT**

Nominated by: MORENO

**District 03 VACANT**

Nominated by: THOMAS

**District 04 VACANT**

Nominated by: ARNOLD

**District 05 VACANT**

Nominated by: RESENDEZ

**District 06 VACANT**

Nominated by: NARVAEZ

**District 07 DERRICK NUTALL**

B M 07 I Holdover

Nominated by: BAZALDUA

Terms served: 1

Member since: 12/3/2019

**District 08 VACANT**

Nominated by: ATKINS

**District 09 RICHARD CUCCIA**

H M 09 I Holdover

Nominated by: BLACKMON

Terms served: 1

Member since: 11/25/2019

B M 10 I Holdover  
Nominated by: MCGOUGH  
Terms served: 1  
Member since: 11/21/2019

District 11 KENNETH STEINHART

W M 11 I Holdover  
Nominated by: SCHULTZ  
Terms served: 0  
Member since: 11/2/2020

District 12 BOB T RICHARD

W M 12 I Holdover  
Nominated by: MENDELSON  
Terms served: 4  
Member since: 11/8/2013

District 13 CHARLES W KIGHT

W M 13 I Holdover  
Nominated by: GATES  
Terms served: 4  
Member since: 1/22/2012

District 14 VACANT

Nominated by: RIDLEY

District 15 BENJAMIN SETNICK

CHAIR (H) W M 09 I Holdover  
Nominated by: JOHNSON  
Terms served: 1  
Member since: 10/24/2019



**PERMIT AND LICENSE APPEAL BOARD (PLAB)**  
**MEETING MINUTES**  
**February 4, 2021**  
**8:30 a.m.**

**Members Present:** Benjamin Setnick, Chair  
Brandi Patterson  
Derrick Nutall  
Richard Cuccia  
Derrick Phillips  
Kenneth Steinhart  
Charles Kight  
Greg Haynes Johnson

**Members Absent:** Nancy Galvan  
Bob T. Richard

**Staff Present:** Anna Holmes, Board General Counsel  
Neva Dean, Assistant Director, DEV  
Biliera Johnson, City Secretary, CSO  
Miroslava Martinez, Assistant City Secretary, CSO  
Dawna Brown, Board Coordinator, CSO  
Ashley DeLaRosa, Administrative Specialist, CSO

**Call to Order**

The meeting was called to order at 8:31 a.m. by Chair Setnick.

**Agenda Item 1 – Public Speakers**

No speakers addressed the Board.

**Agenda Item 2 – Approval of January 7, 2021 Meeting Minutes**

- January 7, 2021 Regular Meeting

Boardmember Nutall moved to adopt the minutes as presented. Motion seconded by Boardmember Kight and unanimously adopted.

**Agenda Item 3 – Briefing and discussion regarding notice to owners of properties affected by the location restrictions**

Neva Dean, Assistant Director for Current Planning in the Department of Sustainable Development provided the Board with a presentation regarding location restrictions.

**Adjournment**

The meeting was adjourned at 9:21 a.m.

---

Benjamin Setnick, Chair